IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH, JAIPUR

O R D E R

S.B. CIVIL WRIT PETITION NO. 4429/2000

RANPAL SINGH RAGHUVEER SINGH & PARTY
Vs.
STATE OF RAJASTHAN & ORS.

DATE: 25.09.2007.

HON'BLE MR. JUSTICE K.S. RATHORE

Mr. Kamlakar Sharma for the petitioner.
Mr. R.B. Mathur with
Mr. Brij Sharma for the respondents.

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Brief facts of the case are that the petitioner filed a complaint against one Shri Raja Ram that he has been convicted under Sections 307, 326, 325, 323/149 IPC and sentenced for 7 years rigorous imprisonment in case No. 13/76 vide judgment dated 03.01.79 and he under went part of the sentence in Sriganganar Jail and part of the sentence in Sanganer Open Jail. It was requested that the facts may be verified from the jail authorities and after verifying the same, the tender of Shri Raja Ram may be rejected and the tender of the petitioner may be accepted.

On enquiry, the jail authorities issued certificate dated 03.04.99 confirming the facts as mentioned in the complaint submitted by the petitioner

that Shri Raja Ram was convicted and sentenced for 7 years rigorous imprisonment. The dispute arose when the orders impugned dated 16.09.99 and 20.10.99 passed by the respondent Excise Department, by which amount of Rs. 21,49,590/- is said to be recovered from the petitioner on account of loss of revenue for 9 days from 01.04.99 to 09.04.99.

These orders have been challenged on the ground that the complaint made by the petitioner was found to be true and the same was verified by the jail authorities and further on making representation, vide order dated 16.09.99 (Annexure-4), after examining the case and representation so filed by the petitioner, it was decided that since complaint made by Shri Ranpal Singh was found to be true, it cannot be said that he has made a false complaint and therefore it is not fair to ask him to pay for the losses due to the delay in finalisation of the bid. It is also observed that the Rajasthan State Ganganagar Sugar Mills Ltd. and franchise shops had begun to operate from 10th April, therefore, Shri Ranpal Singh should be penalised from only the 1st to the 9th April and the demand which was earlier raised was reduced to the extent of Rs . 21,49,590/-.

The petitioner has challenged this demand and submits that the petitioner is not responsible to make the payment of loss caused on account of the delay in granting license on the part of the authorities and the penalty was imposed merely because he has made a complaint against Shri Raja Ram that he has been convicted and sentenced for 7 years rigorous imprisonment. This recovery order which has been passed even after reducing the amount, cannot justify the order for recovery to be made from the petitioner on account of delay in decision made by the authorities.

On the other hand, learned counsel appearing for the respondents has raised preliminary objection regarding maintainability of the writ petition as the petitioner has got alternative efficacious remedy under Section 9-A of the Rajasthan Excise Act and submits that the representation of the petitioner has been thoroughly examined and considered and the petitioner is liable to make the payment of the amount of loss caused on account of 9 days' delay from 01.04.99 to 09.04.99 and they are bound to make the payment of loss as they agreed to compensate the Government for any loss of excise/gaurantee amount vide letter dated 31.03.99.

It is also submitted by the learned counsel for the respondents that the petitioner already filed a writ petition registered as S.B. Civil Writ Petition No. 2858/99 and the same is pending against recovery of Rs. 1,42,95,287/- from the petitioner for the period from 01.04.99 to 30.05.99 raised on the basis of application and undertaking given by the petitioners themselves.

In response to the preliminary objections, the learned counsel for the petitioner Mr. Kamlakar Sharma submits that the order impugned dated 16.09.99 is under challenge which is passed by the Deputy Secretary, Government of Rajasthan, Finance Department, Excise Division, therefore, the remedy under Section 9-A of the Rajasthan Excise Act is not available against this order. He also submits that the respondents are not able to make out any case as to how the petitioner is responsible to make the payment of loss for 9 days.

I have heard rival submissions of the respective parties and carefully gone through the orders impugned dated 16.09.99 and 20.10.99.

It is not disputed that the complaint filed by the petitioner is found to be correct and the same has been considered at the level of the State Government

and penalty amount of Rs. 1,42,95,287/- has been reduced to Rs. 21,49,590/-. Now in this writ petition the only dispute is with regard to recovery of Rs. 21,49,590/- for the loss of 9 days and the petitioner has been held responsible and demand has been raised against him.

Having considered the rival submissions of the respective parties with regard to maintainability of this writ petition as alternative remedy is available to the petitioner under Section 9-A of the Rajasthan Excise Act, the petitioner submits that as the petitioner has challenged the order passed by the respondents dated 16.09.99, therefore, this remedy is not available to the petitioner. I am not convinced with the submissions made on behalf of the petitioner as in this writ petition, the order dated 20.10.99 passed by the Excise Commissioner is also under challenge and the Government has only considered the representation and directed the Excise Commissioner to issue order and this order dated 16.09.99 is nothing but a internal communication between the Deputy Secretary, Government of Rajasthan, Finance Department, Excise Division and the Excise Commissioner, Rajasthan, Udaipur and pursuant to the letter dated 16.09.99, the

Excise Commissioner, Udaipur has passed the order dated 20.10.99.

Against this order dated 20.10.99, the petitioner has got alternative efficacious remedy and could have invoke the remedy under Section 9-A of the Rajasthan Excise Act as the appeal and revision lie against the order passed by the Excise Commissioner and since remedy is available to the petitioner and several disputed questions of facts are raised here in this writ petition, I do not want to interfere in such matters while exercising extraordinary jurisdiction under Article 226 of the Constitution of India.

Thus, as the present writ petition has been filed by the petitioner without availing alternative remedy under Section 9-A of the Rajasthan Excise Act, the writ petition fails and the same is hereby dismissed.

The stay application also stands rejected.

At this stage, learned counsel for the petitioner submits that he may be given time to redress his grievance and invoke alternative remedy under Section 9-A of the Rajasthan Excise Act and the time consumed in filing the writ petition may be condoned.

For that purpose, the petitioner is given liberty to invoke the alternative remedy with appropriate application for condonation of delay.

(K.S. RATHORE),J.

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